IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Civil Application No.1035 of 2006
in
Writ Petition No. 5763 of 2004

1. Janabai w/o R.J.Bhandari
and others ..Petitioners

vs.

1. Dr.Ramesh Dattatrey Pandit
and others ..Respondents

Shri Arif Bookwala i/b Shri Jose George for petitioners
Shri M.V.Palan with Shri S.V.Mhatre i/b M/s M.K.Khatri and Co. for respondent no.1.
Shri Reyon D'Souza for respondent no.4

CORAM: S.B.MHASE J.
27th April, 2006

P.C.

1. Heard the learned Counsel.

2. This is a civil application filed by the defendants in S.C.Suit No.4374 of 1978 as against respondent nos. 1 and 2 who were the plaintiffs in the said suit. Respondent No.3 is the Court Receiver, High Court, Bombay.

3. The said suit was for specific performance of a contract in respect of 850 sq.yards equivalent to 710 sq.meters from the final plot nos.463 and 464 of T.P.S.III, Borivli. In the said suit the Court Receiver was appointed. In the said suit decree for specific performance has been passed and execution is pending. It is to be noted that the area of final plot nos.463 and 464 is approximately 3860.4 sq.yards. Out of only 850

sq.yards was/is the subject matter of the said suit. It is also admitted fact that in view of the directions given by the City Civil Court, the City Survey Officer has measured the final plot nos. 463 and 464 and has demarcated the area of 850 sq.yards. The said map has been prepared as per the measurements carried out on 7th July, 2004. In the said map the area of respondent nos. 1 and 2 namely of the plaintiffs is demarcated by yellow colour. The said map is produced across the bar by the Counsel for the respondents and it is accepted to be the correct map by the learned Counsel for the petitioners/applicants. The said map is taken on record and marked "X" for identification.

4. The applicants have submitted the development plan to the various authorities of the Corporation and the Town Planning Department in respect of the final plot nos. 463 and 464. However, when it is noted by the Receiver, the Receiver has informed to those authorities by letter dated 8th September, 2003 that Receiver has been appointed in respect of these two final plots and, therefore, no permission for development of the said plots be granted. As objection has been taken by the Receiver the plans of the applicants were not sanctioned and, therefore, the petitioners have approached to this Court seeking clarification that the property in respect of which Receiver was appointed was only 850 sq.yards which is more specifically demarcated in the map dated 7th July, 2004

and, therefore, the objection of the Receiver in respect of rest of the part of final plot nos.463 and 464 is improper and requires to be clarified and, therefore, they have approached this Court to clarify the position.

5. So far as the suit property is concerned, that has now been specifically demarcated in the map dated 7th July, 2004 by the City Survey Officer and that map has been accepted by respondent nos. 1 and 2. It is also admitted before this Court that at one stage the present writ petition was dismissed for default as a result of which stay granted by this Court was vacated and, therefore, Receiver, respondent no.3, has handed over possession of 850 sq.yards to respondent nos. 1 and 2 and presently respondent nos. 1 and 2 are in possession of 850 sq.yards. Rest of the execution is yet to take place in the executing court. The petitioners have also accepted that the Receiver has handed over the possession of yellow portion from the map dated 7th July, 2004 to respondent nos. 1 and 2.

6. Thus, this Court finds that so far as identification of the property of S.C.suit No.4374 of 1978 is concerned there is no dispute between the parties. Therefore, protecting the rights of the original plaintiffs/respondent nos. 1 and 2 in respect of the demarcated yellow portion clarification in respect of rest of the property namely part of final plot nos.463 and 464

can very well be given in respect of the petitioners since that is the property which is not the subject matter of the suit and, therefore, it is clarified by this Court that excepting the yellow portion from the map prepared by the City Survey Officer on 7th July, 2004 which is marked as "X" for identification in this application, rest of the portion of final plot nos. 463 and 464 can be developed by the petitioners and various authorities to whom the Receiver has addressed the letter shall treat the said letter only in respect of the yellow portion demarcated specifically. It is further clarified that while sanctioning the development plan in respect of the area which belongs to the petitioners excluding the area demarcated by the yellow colour the concerned authorities shall keep in mind that this yellow portion shall not be shown as part of the development plan of the petitioners and the said area shall not be calculated either for FSI and/or for keeping open space of the plan of the petitioners. Thus, in short, respodnent nos.1 and 2’s rights in respect of development of yellow portion in other respect has been kept in tact and it will be subject to the ultimate result of this petition and/or execution petition.

6. Receiver is hereby directed to circulate the copies of this order to the concerned authorities to whom the Receiver has already addressed letter dated 8th September, 2003 along with the plan and in order to enable the

Receiver to circulate the map respondent nos. 1 and 2 shall supply to the Receiver the necessary copies of the plan. Receiver shall comply with the orders within two weeks from the date of receipt of this order by him. By consent of both sides the hearing of the writ petition is expedited. In the above terms and accordingly the civil application is disposed.

(S.B.MHASE J.)